the vehicle where he might be exposed to undue danger would certainly show an indifference to the care needed. It is within ordinary knowledge that most accidents between motor vehicles bring about damage to the front part of the vehicles and there can hardly be a more dangerous place in any vehicle than that occupied by the driver. Although in each action arising out of allegations of negligence "the Court must deal with the case upon the facts" (*Clark and Lindsell* on Torts, 10th Edition, page 195) the general principle in cases such as this appears to have been stated by Lord Justice Kennedy in *Latham v. R. Johnson & Nephew, Ltd.*[1]. The Lord Justice used the following words:—

"..... the person guilty of the original negligence will still be the effective cause if he ought reasonably to have anticipated such interventions and to have foreseen that if they occurred the result would be that his negligence would lead to mischief."

The intervention in this present case was the collision between the two vehicles and the mischief which resulted was the death of the deceased. In the view of this Court the driver of every vehicle ought reasonably to anticipate an accident although it may never occur. In the present case, the driver of the bus could not but have known that, in the event of a collision involving the front of his vehicle, the deceased was standing in a most dangerous place—and standing there at his (the driver's) invitation and on his authority. It may be that, in doing what he did, the driver was actuated by kindness of heart in seeking to prevent this ill-fated boy from being late for school; but I must hold that the driver's negligence has been established as being the effective cause of the boy's death.

I approached the difficult task of the assessment of damages in the light of the decision given in *Benham v. Gambling*[2]. I accept the evidence that the deceased was a normal, healthy and intelligent boy and I am satisfied that his circumstances of life were calculated to lead on balance to a positive measure of happiness of which, by his death, he has been deprived. I assess the damages at $2,500.

Although the plaintiff's claim for funeral expenses was not supported by receipts, I consider the amount claimed to be reasonable and the plaintiff is entitled to recover them.

I give judgment, therefore, for the plaintiff in the sum of $2,662.60, with costs—to be taxed.

Judgment for the plaintiff.

In re SETHURAMASWAMY CHETTIAR, DECEASED; R. M. THIRUPPATHI CHETTIAR AND ANOR. v. LETCHUMANAN CHETTIAR AND ORS.

[Orig. Civ. Juris. (Thomson, J.) October 11, 1950]

[Ipoh—Originating Motion No. 10 of 1950]

Probate and Administration Enactment—Ex parte order for sale—Beneficiaries having contingent interests—Service on—Japanese Judgments and Civil Proceedings Ordinance, 1946—Application to set aside Japanese decree—Duress or coercion—Relief in what circumstances—Debtor and Creditor (Occupation Period) Ordinance, 1948—Value of land at various stages of the occupation—Agents and Trustees (Occupation Period) Ordinance, 1949—Protection of trustees and bona fide purchasers.

The testator by his will gave the whole of his Malayan property to his executor absolutely but subject to payment of Rs. 10,000 to his two widows upon each of them adopting a son. The executor, who was in India at all material times, appointed an attorney to take out letters of administration and further authorised him to sell any property belonging to the testator's estate as the attorney may consider proper.

The attorney obtained an order for grant of letters of administration on the 30th June, 1941, but paid the estate duty in occupation currency on the 3rd December, 1943, and extracted grant from the Japanese Court on the 2nd June, 1944.

On an **ex parte** application by the administrator for the purpose of "liquidating expenses incurred" including payments to the Indian Independence League, the Japanese Court gave him permission on the 9th December, 1944, to sell various pieces of land. The administrator sold sixteen pieces of land to twenty-five of the respondents or their predecessors in title.

The executor died in India on the 28th November, 1945. An application by the administrator for the substitution of the Japanese grant under section 5 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, was rejected on the ground that on the death of the executor the authority of the administrator came to an end.

The applicants then obtained grant of letters of administration **de bonis non** as attorneys of the widows of the testator and made this application under section 3 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, to set aside the order for sale obtained by the previous administrator on the grounds that it was (i) obtained under duress, (ii) obtained **ex parte**, and (iii) detrimental to the estate; and to set aside the sales to the respondents.

Held, that a person with a possible future claim is not a proper party to a litigation in respect of the administration of a testator's or intestate's estate and as there was no evidence that the contingencies upon which the widows' interests depended had occurred, the widows could not be made parties.

Held further, that as the application was made by the attorney of the executor empowered to sell, no question of serving the executor arises.

Quaere: whether failure to serve beneficiaries is a procedural defect which rendered the order voidable and not void **ab initio**, and whether such order can be set aside to the prejudice of innocent third parties who had altered their position on the strength of the order.

Held further, that the Schedule to the Debtor and Creditor (Occupation Period) Ordinance, 1948, is the instrument for assessing post-war effects of certain strictly described types of dealings in occupation currency and not a universal yardstick for the ascertainment of questions of fact as to land values at different stages of the occupation.

Held further, that to entitle a party to relief on grounds of duress or coercion it is necessary to show that he suffered injustice or oppression which was peculiar to him and beyond the general lot of his fellows; otherwise the loss is to lie where it first fell.

Held further, that even if the payments to the Indian Independence League be unlawful and may well be contrary to what is now thought to be public policy, the administrator is protected under section 7(2)(e) of the Agents and Trustees (Occupation Period) Ordinance, 1949, and as such any steps taken by him to obtain funds cannot be impugned to the detriment of innocent third parties.

Cases referred to :—

(1) *In the Estate of Haji Fatimah* 6 F.M.S.L.R. 154.
(2) *McPherson v. McPherson* (1936) A.C. 177.
(3) *In re King* (1907) 1 Ch. 72 at page 75.
(4) *Monkland v. Jack Barclay, Limited* 66 T.L.R. 150 at page 156.

ORIGINATING MOTION.

J. D. M. Donnelly for the applicants.

B. K. Das for respondents Nos. 11–22, 24 and 25.

The other respondents appeared in person.

Cur. Adv. Vult.

Thomson, J. : — This is an application to set aside a decree of a Japanese Court and for certain reliefs which are said to be consequential. By reason of the Japanese Judgments and Civil Proceedings (Procedure) Rules, 1946, it has been brought by way of originating motion.

The facts of the case, which have been proved by affidavit evidence, are not in any real dispute, and it will be convenient to set them out at this stage.

One Sethuramaswamy Chettiar died in India on 2nd February, 1941, leaving property in India and in the Federated Malay States. The greater part of his property in the Federated Malay States consisted of a one-third share of the assets, mainly consisting of land, of a partnership of which he was a member and of which the two other members were his brother Muthiah Chettiar and his nephew Ramanathan Chettiar s/o Palaniappa Chettiar who would appear to be one and the same person as the second applicant in the present proceedings. By his will he appointed his father Raman Chettiar to be his executor. To Raman Chettiar he gave all his property in the Federated Malay States absolutely and a life interest in his property in India, the reversion of which was to go to any children who might be subsequently adopted by his two widows in accordance with the provisions of the will. He authorised each of these two widows to adopt a son and left to each of them, in addition to the jewellery she was wearing, a legacy of 10,000 rupees which on my consideration of the will only became payable in each case in the event of the widow in question adopting a son. Although it would appear that both widows have in fact adopted sons, there is no evidence to show that either of the adoptions in question had taken place at any date which is material to the present proceedings. There is no evidence as to the value of the portion of the deceased's estate that lay in India, but so much of it as lay in the Federated Malay States was valued for estate duty at $123,000 in 1941, and at slightly less in 1948.

On 9th March, 1941, Raman Chettiar, who was then in India and who apparently remained in India until his death, appointed one Letchumanan Chettiar, the first respondent to the present proceedings to be his attorney for the purpose of obtaining representation to the estate in the Federated Malay States and generally to act for him in the affairs of the estate. This power of attorney, it should be observed, contained a power to sell any property forming part of the estate. On 4th April, 1941, Letchumanan Chettiar filed a petition for letters of administration with will annexed and on 30th June, 1941, an order was made for letters of administration to issue as prayed for on the petitioner entering into a personal bond in the sum of $140,000. On 3rd December, 1943, estate duty amounting to $29,899.29 was paid to the agents of the occupying power and on 2nd June, 1944, the letters of administration which had been ordered on 30th June, 1941, were extracted. On the 4th December, 1944, Letchumanan Chettiar was appointed receiver of the partnership of which Sethuramaswamy Chettiar had been a member, and a third part of the assets of which formed the greater part of the Malayan estate of Sethuramaswamy Chettiar, and on 8th December, 1944, he filed the application which led up to the order which has been called in question in the present proceedings.

That application was for leave to sell at a price of not less than $800 an acre thirty pieces of land amounting in all to some eighty-three acres and was supported by an affidavit which stated that it was desired to sell the lands in question "for the purpose of liquidating" expenses which had been incurred in the administration of the estate and expenses of the

partnership pending its winding up. These expenses were set out as follows:—

Estate Duty	$29,899.29
Indian Independence League — Assessment part-paid	14,001.09
Indian Distress Relief Fund	1,157.02
Quit Rent	5,875.50
Interest on loans	1,410.47
Lawyers' fees and legal expenses ..	850.00
Estate expenses: Labourers' wages, clerks' salaries, weeding, etc. ..	12,384.51
Salaries of staffs of the Firm	2,595.06
	$68,172.94

The application to the Court for leave to sell was made under section 94(iii) of the Probate and Administration Enactment and was necessary by reason of the facts that although the land belonged to the partnership it was registered in the name of the deceased, and that the deceased had a one-third beneficial interest in the assets of the partnership. The application was made *ex parte* and was not served on anyone.

The order prayed for (to which I shall hereafter refer as the 'Japanese Decree') was made on 9th December, 1944. In accordance with it and on various dates between 18th December, 1944, and 16th April, 1945, Letchumanan Chettiar sold and transferred sixteen of the pieces of land in question amounting to some forty-six acres to twenty-five of the present respondents or their predecessors in title, and the transfers were presented (though not all registered) prior to the end of the Japanese occupation.

Raman Chettiar died in India on 28th November, 1945, and the present applicants are the administrators of his estate. In consequence of his death, the mandate given by him to Letchumanan Chettiar came to an end, and when Letchumanan Chettiar subsequently applied for substituted letters of administration to the estate of Sethuramaswamy Chettiar under section 5 of the Japanese Judgments and Civil Proceedings Ordinance his application was accordingly rejected. Letters of administration to that estate with will annexed were granted to the present applicants as attorneys for the widows of Sethuramaswamy Chettiar on 26th January, 1948.

On 31st March, 1950, the applicants commenced the present proceedings against Letchumanan Chettiar and the twenty-five persons (or their representatives in title) who had purchased the pieces of land which were sold subsequent to and in consequence of the Japanese Decree. They claim that the order of the Japanese Court 9th December, 1944, should be set aside on the grounds that it was,

(i) obtained under duress;
(ii) obtained *ex parte;* and
(iii) detrimental to the estate.

They further claim that the transfers of the various pieces of land involved should be declared void, and they claim certain minor reliefs of a consequential nature which it is unnecessary to set out here.

Two preliminary points were raised on behalf of the respondents to the effect that the present applicants were not "persons aggrieved" by the Japanese Decree and consequently had no *locus standi* and that in so far as the proceedings sought to have certain registered dealings in land set aside they should have been commenced by way of suit and not by way of originating motion. In view, however, of certain conclusions at which I have arrived I do not find it necessary to consider these points but propose to deal with the question of substance which is whether or not the Japanese Decree should be set aside.

By section 3(1) of the Japanese Judgments and Civil Proceedings Ordinance, 1946, any person aggrieved by a Japanese decree may apply to the Court for an order that such decree be set aside. By sub-section (2) it is provided that upon the hearing of any such application the Court may "subject to the provisions of this section make such order.....thereon as in the circumstances of the case may seem just", and by sub-section (4) it is provided as follows:—

> "Without prejudice to the generality of the provisions of sub-section (2) of this section, a Japanese decree may be set aside on any of the grounds following:
>
> (a) that it was obtained as a result of such force, injury or detriment to any party to the proceedings or other person, or such threat thereof, as, in the opinion of the appropriate Court, was sufficient to render the action of the party in relation to the proceedings involuntary;
>
> (c) that it was based on principles unknown to the existing laws; or
>
> (d) on any other ground which the appropriate Court considers to be sufficient."

Before considering the general question of whether it would be just to make an order setting aside the Japanese Decree, a matter on which the Ordinance gives the Court discretion, it will be convenient to consider the detailed grounds upon which the applicants base themselves. In doing so, it is to be borne in mind that throughout the proceedings there has been no suggestion that the first respondent, Letchumanan Chettiar, or any of the other respondents have acted otherwise than perfectly honestly and in good faith.

In the first place, it is said that the order was obtained under duress by which expression I take it is meant that it was obtained as a result of such a threat

of force, injury or detriment to the party who applied for it as was sufficient to render his action involuntary. This ground was mainly urged in relation to the payments to the Indian Independence League and the Indian Distress Relief Fund amounting to some 20% of the total amount in respect of which leave to sell was sought, but it was also suggested that it related to the payment of estate duty which amounted to some 40% of the amount in question. As regards the estate duty, I will content myself with observing that it had to be paid before administration could be extracted and, in any event, full credit for the amount so paid, although it was paid in Japanese currency, was given to the estate by the post-occupation authorities when the present applicants came to obtain letters of administration in 1948. As regards the Indian Independence League, there is no actual evidence to show that the action of Letchumanan Chettiar in taking steps to obtain funds to contribute to this was involuntary. There was produced, however, a certain amount of correspondence emanating from this body in one letter of which demanding payment of certain sums the expression occurs: "failure to comply with this notice will be reported for necessary action." In addition I was invited to take judicial notice of what is said to be the notorious fact that during the occupation period the so-called Indian Independence League habitually collected subscriptions from persons of the various Indian races to assist in the waging of war against, *inter alia*, the then Government of India, and that this was done by holding out threats of various sanctions to be applied by the occupying power. I have no doubt that such a state of affairs in fact existed and it may well be that it accounted for Letchumanan Chettiar being anxious to obtain funds to meet the subscriptions which were demanded of him and which, I am bound to assume on the material before me, were in fact paid by him. On this, however, I have two observations to make. In the first place. I would observe that Letchumanan Chettiar personally is protected in respect of these payments by section 7 (2) (e) of the Agents and Trustees (Occupation Period) Ordinance, 1949, which provides in effect that no trustee acting in good faith shall be liable for any loss to the trustee property which he holds occasioned by the payment in respect of the trust property to any body of persons authorised by the occupying power of any forced contribution whether called a voluntary contribution or not, imposed directly or indirectly at the instance of such power. That section appears to me to cover payments made to the Indian Independence League as I understand the position, and it would be strange indeed that if Letchumanan Chettiar is thus protected in respect of the payment of the money nevertheless the steps he took to obtain the money to make the payment can be impugned to the detriment of innocent third parties. And, in the second place, I would point out that these payments to the Indian Independence League only made up some 20% of the money which it was sought to raise. There is no question as to the propriety of having raised the balance of the money, and that being so, if I were disposed to set aside the Japanese order I would be faced with the insuperable practical difficulty of setting aside 20% of it while leaving the remaining 80% in such force as it may at present possess.

In the second place, the applicants say that the order should be set aside because it was obainted *ex parte*, and in that connection I was invited to consider the case *In the Estate of Haji Fatimah*[1]. According to the only available report, that was a case where an administrator applied *ex parte* for authority to sell land under section 94 of the Probate and Administration Enactment, and an order was made accordingly. At a later stage the representative of a beneficiary applied before another Judge to have the order set aside on the ground that it had been made without service on beneficiaries who were necessary parties. That application was refused, and on appeal the refusal was reversed. The relevant portions of the judgment of the Court of Appeal (per Gompertz, C.J.) are as follows :—

> "Applications under section 94 of the Probate and Administration Enactment must be made by originating summons. Section 481(i)(f)* of the Civil Procedure Code governs this, and service is governed by section 483(A)(a)†.
>
> It is clear that the beneficiaries should have been served, or at least one of them, and consequently we think that Farrer-Manby, J., should have set aside the order of Acton, J., on that ground. We therefore set aside the order of F. Manby, J., and make the order which we think he ought to have made setting aside and discharging the original order made by Acton, J."

Beyond what has been stated, the report is silent as to the facts of the case, and, in particular, it does not state whether the interests of any third party were involved or whether or in what way any right or interest of the appellant had been affected. For the respondents, Mr. Das argued that in the absence of anything to the contrary in the report it must be assumed that it related to a case where no interests of third parties were involved and that accordingly it should be distinguished from the present case. He also argued (basing himself on the case of *McPherson v.*

* Now sec. 467.
† Now sec. 469(A)(a).

McPherson[2]) that if in the present case there had been an omission to serve necessary parties that was a procedural defect which rendered the order made voidable and not void *ab initio,* that the Court had a discretion in the matter and that that discretion should not be exercised to the prejudice of innocent third parties who had altered their positions on the strength of the order. I find these arguments attractive, but in view of the nature of the report of *Haji Fatimah's case,* I am reluctant to accept them.

In any event, however, I find it unnecessary to decide the point because I am not satisfied that there was in fact any omission to serve necessary parties. By section 469A(a) of the Civil Procedure Code it was necessary to serve the summons which led to the making of the Japanese Decree upon "one of the persons whose rights or interests are sought to be affected". But who were these persons? They were not the adopted children for there is nothing to shew that they were in existence as such at any material time. Nor were they the two widows. Their interests were contingent, there is nothing to shew that at any material time the contingencies upon which their interests depended had occurred and as was said by Neville, J., in the case of *In re King*[3] "no case can be shewn deciding that a person with a possible future claim is a proper party to litigation in respect of the administration of a testator's or an intestate's estates". There remains only Raman Chettiar himself. But the proceedings in question were being taken on his behalf by his own attorney whom he had authorised *inter alia* to sell any of the property belonging to the estate of Sethuramaswamy Chettiar as he might consider proper, and in the circumstances I fail to see that any question of it being necessary to serve the summons on him can possibly arise.

The third specific ground on which it was sought to have the Japanese Decree set aside was that it was detrimental to the interests of the estate in that the minimum amount for which the land was permitted to be sold (*i.e.* at a rate of not less than $800 an acre) was far below the real value of the land as shown when the amount in question is re-valued in accordance with the sliding scale set out in the Schedule in the Debtor and Creditor (Occupation Period) Ordinance, 1948. I fail to see that this argument possesses any merit. There is not a scrap of evidence before me to suggest that at the time the Japanese decree was made $800 an acre was not a fair and reasonable price for the land in question in the sense of being the price which at that time a willing purchaser would have paid to a willing vendor. The Schedule to the 1948 Ordinance is the instrument provided by the legislature for assessing the post-war effects of certain strictly described types of dealing in Japanese occupation currency. I am not prepared to accept it as an universal yardstick to be employed in the ascertainment of questions of fact as to land values at different stages of the occupation. In any event, the argument cuts both ways for it is to be borne in mind that although the land was sold for Japanese currency the debts of the estate which included the pre-occupation liability for estate duty were paid off in the same currency.

Having thus dealt with the specific grounds on which the Japanese Decree has been attacked, I proceed to consider the general question of whether it seems just that it should be set aside. I do not propose to ask myself in general terms "what is justice?" and then not wait for an answer, nor do I propose, as I was invited to do by counsel for the applicants, to attempt to ride that "unruly horse", public policy. On this question of public policy, I would quote the following observations of Humphreys, J. in the case of *Monkland v. Jack Barclay, Limited*[4] :—

> "'"Public policy"' said Mr. Justice Burrough (I believe quoting Chief Justice Hobart), 'is an unruly horse, and dangerous to ride.' I quote also another distinguished Judge, more modern, Mr. Justice Cave: 'Certain kinds of contracts have been held void at common law on the ground of public policy; a branch of the law, however, which certainly should not be extended, as Judges are more to be trusted as interpreters of the law than as expounders of what is called public policy.' I think the present case is an illustration of the wisdom of these remarks. I venture to make another. No evidence is given in these public policy cases. The tribunal is to say, as a matter of law, that the thing is against public policy, and void. How can the Judge do that without any evidence as to its effect and consequences?"

What is in point here is the policy of the Legislature, and so far as I have been able to advise myself from a study of the whole body of recent legislation dealing with the commercial sequelae of the Japanese occupation that policy would seem on the whole to be to treat as valid the actions of Japanese Courts in the exercise of their civil jurisdiction and commercial transactions generally, except where circumstances of unusual injustice or oppression have entered into individual cases or transactions. In other words, where individuals have suffered, from circumstances of injustice or oppression which were common to all members of the population or of a considerable section of it, the loss, if any, is to lie where it first fell. Where, however, an individual can show that he suffered injustice or oppression which was peculiar to him and beyond the general lot of his fellows, then he is entitled to relief.

In the present case, it seems to me that, except as regards the Indian Independence League, the exactions of which were apparently the common misfortune of the Indian section of the population during the occupation, the Japanese judge made very much the same sort of order as would have been made by a Federated Malay States Judge in 1941, or a Malayan Union Judge in 1946, and as regards the payment to the Indian Independence League, although that payment may have been unlawful and may well be contrary to what is now thought to be public policy, it is a payment of a sort which has been recognised by the law to the extent of granting protection to any trustee or agent who made it in good faith. Moreover, it is not suggested that the money realised by the sale of the land has been used for any purpose except to pay off liabilities of the estate which would otherwise have had to be discharged in post-occupation currency and as far as the respondents other than the first respondent are concerned the effect of setting aside the Japanese Decree would be to deprive them of land which so far as the evidence goes they must be presumed to have bought in good faith for a fair price and with money of which the estate has had the benefit. As far as the first respondent is concerned I do not see that to set it aside would affect in any way his rights and obligations in relation to the estate.

In all the circumstances of the case, I fail to see that the applicants have made out any just claim to the relief for which they ask and their application is accordingly dismissed.

There remains the question of costs. It is abundantly clear that although this application has ostensibly been made for the benefit of the estate of Sethuramaswamy Chettiar it would, if successful, have resulted in much greater benefit to his former partners than to the estate. In the circumstances, I order that the successful respondents recover one-third of their taxed costs from the estate and the other two-thirds from the applicants personally.

Order accordingly.